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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,339	11/24/2003	Christopher Matthew Pyles		6563
7590	07/17/2007		EXAMINER	
Christopher Pyles 11767 Westview Pkwy. San Diego, CA 92126			SPISICH, MARK	
		ART UNIT	PAPER NUMBER	
		1744		
		MAIL DATE	DELIVERY MODE	
		07/17/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/722,339	PYLES, CHRISTOPHER MATTHEW
<b>Examiner</b>	<b>Art Unit</b>	
Mark Spisich	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 04 May 2007.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-8 and 16-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 1-8 is/are allowed.

6)  Claim(s) 16-18 is/are rejected.

7)  Claim(s) 19 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_.  
  

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Deck et al (USP 3,369,269). The patent to Deck discloses a paint applicator comprising a handle (2), roller applicator (4), platform (1) fixedly attached to the handle and including a roller arm (3), shield (8) and a paint brush (11).
3. Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Whalen (USP 2,907,061). The patent to Whalen discloses a paint applicator (10) comprising a handle (20), roller applicator (5), platform (26) fixedly attached to the handle including a roller arm (the region including the semi-circular portion of the platform adjacent the roller in fig 2), shield (22,24) and a paintbrush (40).

### ***Allowable Subject Matter***

4. Claims 1-8 are allowed.
5. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. The following claim has been drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to applicant.

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for consideration (and is presented in the form that applicant should use in response to this office action, keeping in mind that a complete list of all of the claims must be submitted with each amendment):

Claim 16. (currently amended) A paint applicator apparatus for applying paint on a surface and up to an edge of the surface without applying paint on an adjacent surface extending from the edge, comprising:

a handle;

at least one roller applicator for rolling on an applying paint to the surface;

a substantially rigid and planar platform, said platform having an upper surface and first and second opposite sides, fixedly attached to said handle being fixedly attached to the upper surface of the platform between the first and second sides thereof such that said platform and said handle are held in fixed position relative to the surface during a paint application operation and said platform also including a roller arm adjacent one of the sides of the platform that is operably attached to said roller applicator such that said roller applicator is at an angle substantially orthogonal to said roller arm and substantially coplanar with said platform, said platform further extending along substantially the entire length of the roller applicator between the opposite sides thereof;

a shield operably attached to the other side of said platform and positioned for moving along the adjacent surface to position said roller applicator on the surface a predetermined distance from the adjacent surface;

and a paintbrush attached to said paint applicator apparatus for applying paint on the surface up to the edge without applying paint to the adjacent surface, wherein said paintbrush is positioned to partially redistribute the paint previously applied by said roller applicator closer to the surface edge.

***Response to Arguments***

7. Applicant's arguments filed 4 May 2007 have been fully considered but they are not persuasive. Applicant's arguments with respect to both prior art patents applied against the claims are not commensurate in scope with the claimed structure. Although the disclosed platform (and handle) is noticeably different than that of the prior art, the platform as defined in the claims reads on those of the prior art. The arguments deal essentially with the differences in the operation of the device and are non-persuasive in that applicant has not pointed out a specific claimed structural element that is lacking in the prior art. The claim merely recites "a substantially rigid platform fixedly attached to the handle". The structure thereof in claim 16 is not defined in a manner which structurally defines over the prior art and which support the "such that" phrase added in the amendment.. Also, the argument with regard to Whalen pertains to the control of the amount of flex in the brush(es). Claim 16 is totally silent with regard to this. Keep in mind that it is the claims and not the disclosure that must define over the prior art. Applicant's attention is directed to the proposed changes above with regard to claim 16.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS